(1)

Supreme Court, U.S.
FILED

02 286 JUL 13 2002

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

LLOYD VICKROY,
Petitioner

v.

BRAD SCHAUFLER
Respondent

On Petition for a Writ of Certiorari
To The Arkansas Supreme Court

PETITION FOR WRIT OF CERTIORARI

LLOYD VICKROY, Pro Se
Counsel of Record
1900 COUNTY ROAD 7320
CAULFIELD, MO 65626
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Brf

QUESTION PRESENTED

Does State of Arkansas' penal code "under 15 minutes no arrest" law, violate the civil rights of a citizen and the right to free passage, when that law is used for stopping of motor vehicles upon the interstate for less than fifteen minutes, without it constituting an arrest, under Arkansas law, when there is no evidence that a crime has been committed?

LIST OF PARTIES

All parties appear in the caption on the cover page.

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IN THE

Supreme Court of the United States

PETITION FOR THE WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

For cases from **state courts:**

OPINIONS BELOW

The opinion of the highest court to review the merits appears at Appendix D to the petition and is unpublished.

The opinion of the state appeals court appears at Appendix A to the petition and is unpublished.

The first opinion of the state circuit court appears at Appendix B to the petition and is unpublished.

The second opinion of the state circuit court appears at Appendix C to the petition and is unpublished.

JURISDICTION

For cases from **state courts:**

The date on which the highest state court decided my case was 18 April 2002.

A copy of that decision appears at Appendix D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments and Articles involved:

First, Fourth, Fifth, Eighth, and Fourteenth; Article IV section 2.

STATEMENT OF THE CASE

1. Vickroy, a resident of Missouri, did not commit a crime, was not arrested for a crime, nor prosecuted for a crime. Ketchum v. City of West Memphis, Arkansas 974 F.2d 81. Therefore, Vickroy had right of free passage without interference throughout the State of Arkansas.

Edwards v. People of California 314 U.S. 160.

2. Vickroy was arrested under color of state law,(penal code cites that any stop under 15 minutes

is not an arrest) even the random stop of Vickroy, by the use of force (blue emergency lights), his papers searched and he was released without receiving a citation.

3. Schaufler, the arresting officer, stated under oath, in the trial court, that he saw nothing for which to arrest Vickroy for but lights shining out of a ranch driveway. (A ranch driveway not fenced is a highway as defined under Arkansas law).

4. Schaufler made claim of an oral agreement between him and the owner of the driveway, eighteen months before, to watch the driveway. No factual evidence was placed on record to substantiate this claim.

REASONS FOR GRANTING THE PETITION

The section of the Arkansas penal code that states:" any stop under 15 minutes is not an arrest", is too broad in

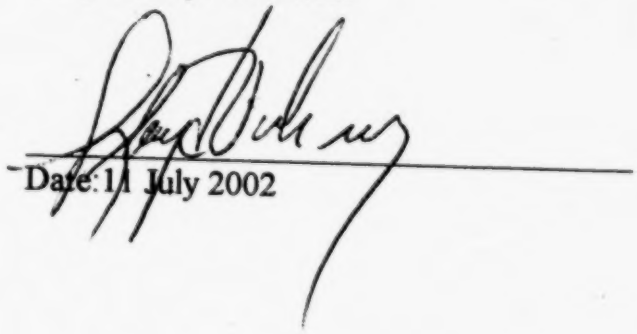
nature and unconstitutional to all persons who travel upon the interstate or intrastate roadways in the State of Arkansas.

CONCLUSION

Conformance with the right of free passage of citizens, without the use of local laws, should be the same for every state.

The petition for a writ of certiorari should be granted.

Respectfully submitted:



Date: 11 July 2002

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BRAD SCHAUFLER

Respondent

On Petition for a Writ of Certiorari
To The Arkansas Supreme Court

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

LLOYD VICKROY, Pro Se
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18pp

APPENDIX A

DIVISION I

ARKANSAS COURT OF APPEALS

	No. CA 01-938
	Opinion Delivered MARCH 13, 2002
LLOYD VICKROY	APPEAL FROM THE FULTON COUNTY CIRCUIT COURT
APPELLANT	[NO. CIV-2000-6-2]
V.	HONORABLE JOHN NORMAN
BRAD SCHAUFLER	HARKEY, CIRCUIT JUDGE
	APPEAL DISMISSED
APPELLEE	

TERRY CRABTREE, Judge

The appellant, Lloyd Vickroy, filed a pro se complaint in the Fulton County Circuit Court seeking one

million dollars in compensatory damages and an additional one million dollars in punitive damages from the appellee, Brad Schaufler, for violating appellant's First and Fourteenth Amendment rights and the right of free passage upon the interstate. The circuit court entered an order in favor of appellee on December 19, 2000. On appeal, appellant claims that the circuit court abused its discretion by not finding that appellee unlawfully violated appellant's right of free passage, right to be free of unreasonable search and seizure, and right to be free from false arrest. We dismiss.

On August 14, 1999, at approximately 10:28 p.m., appellant drove out of the driveway of Ms. Berry, an elderly widow. Eighteen months earlier, Berry had contacted the sheriffs office, spoken with appellee, a deputy, and requested that the sheriffs office make a

special effort to watch her home and property. While in his patrol car on the evening of August 14, 1999, appellee observed appellant as he exited Berry's property. Appellee began to follow appellant and noticed mechanical problems with the lighting on appellant's truck. At that time, appellee called the dispatcher and requested a check on the ownership of the truck. Then, appellee stopped appellant in his vehicle.

Appellee walked from his patrol car to appellant's truck window. Appellee explained that Berry had been having problems with burglars and asked appellant for his driver's license, which appellant provided. After appellee confirmed the name on the license, he returned it to appellant and said, "that's all I need from you." According to appellant, the entire stop took about five minutes from the time appellee walked up to the truck until appellee

returned to his patrol car. Appellant did not get out of his truck; appellee did not search appellant or his truck; and appellee did not issue appellant a citation.

We do not reach the merits of appellant's arguments on appeal as we are without jurisdiction to do so. Arkansas Rule of Appellate Procedure 4(b)(l) (2001) provides for an extension of time for the filing of a notice of appeal as follows:

> (1) Upon timely filing in the circuit court of a motion for judgment notwithstanding the verdict under Rule 50(b) of the Arkansas Rules of Civil Procedure, a motion to amend the court's findings of fact or to make additional findings under Rule 52(b), a motion for a new trial under Rule 59(a), or any other motion to vacate, alter, or amend the judgment made no later than 10 days after entry of judgment, the time for filing a notice of appeal shall be extended for all parties. The notice of appeal shall be filed within thirty (30) days from entry of the order disposing of the last motion outstanding. However, if the circuit court

> neither grants nor denies the motion within thirty (30) days of its filing, the motion shall be deemed denied by operation of law as of the thirtieth day, and the notice of appeal shall be filed within thirty (30) days from that date.

Appellant filed a motion for reconsideration on December 22, 2000, three days after the lower court entered its order in favor of appellee. The circuit court held a hearing on the motion to reconsider on May 22, 2001, and entered an order denying the motion on July 25, 2001. Appellant filed his notice of appeal on August 6, 2001.

We treat appellant's motion for reconsideration as a Rule 4 filing. See Slaton v. Slaton, 330 Ark. 287, 956 S.W.2d 150 (1997); Arkansas Dep't of Human Servs. v. Thomas, 71 Ark. App. 348, 33 S.W.3d 514 (2000); Guthrie v. Twin City Bank, 51 Ark. App. 201, 913 S.W.2d 792 (1995). Therefore, the "deemed denied"

provision of Rule 4 of the Arkansas Rules of Appellate Procedure would apply. Here, the trial court failed to act upon appellant's motion to reconsider within thirty days of its filing. Thus, the motion for reconsideration was deemed denied by operation of law as of the thirtieth day, and appellant's notice of appeal was due within thirty days from that date. Clearly, appellant failed to file a timely notice of appeal as it was filed on August 6, 2001. The failure to file a timely notice of appeal deprives this court of jurisdiction. Williams v. Hudson, 320 Ark. 635, 898 S.W.2d 465 (1995); Schaeffer v. City of Russellville, 52 Ark. App. 184, 916 S.W.2d 134 (1996). Being without jurisdiction, we must dismiss this case.

ROBBINS and ROAF, JJ., agree.

APPENDIX B

IN THE CIRCUIT COURT OF THE COUNTY OF FULTON ARKANSAS

LLOYD VICKROY PLAINTIFF

V. Civil No. CIV-2000-6-2

BRAD SCHAUFLER DEFENDANTS

ORDER OF DISMISSAL WITH PREJUDICE

On November 21, 2000, a hearing was held on the Defendant's Motion for Summary Judgment. The Plaintiff had filed a response to the Motion. Both parties were present and a hearing was conducted. At the hearing, the Court denied Defendant's Motion for Summary Judgment. Plaintiff was asked if he requested a jury trial and he stated that he did not. Plaintiff asked the Court to proceed since the witnesses that he had subpoenaed were present. At that time, a trial on the merits was conducted by the

Court. The Court made the following findings of fact and conclusions of law.

The Plaintiff in this case, Lloyd Vickroy, was stopped by the Defendant, Brad Schaufler, on August 14, 1999. The Court finds that, according to Plaintiffs own testimony, the duration of the stop was five (5) minutes or less. The stop was preceded by an oral request from a Fulton County property owner, Ms. Berry, to the Defendant, a Fulton County Sheriffs Office deputy, to monitor her property because she had prowlers at night, either trespassing hunters or persons intent on stealing personal property. On that evening at 10:30 at night, the Plaintiff was seen by the Defendant leaving Ms. Berry's property. He did not recognize the vehicle. After the vehicle passed, he noticed what he perceived to be

mechanical lighting problems with the rear of the Plaintiffs truck. At that point, the Defendant stopped the Plaintiff. As stated above, the duration of the stop was five minutes of less. After the Defendant found that Plaintiff knew Mr. Berry, he informed him of the mechanical problem, returned his drivers' license, and the stop was terminated. No citation was issued. Plaintiff did not leave his vehicle. No search was conducted.

The Court finds that the Defendant had a reasonable suspicion to stop Plaintiff. Further, the stop was unintrusive and the duration was reasonable. Pursuant to Arkansas Law, the Court hereby finds that stop was not an arrest, as Plaintiff suggested. The Defendant did not violate any of Plaintiffs constitutional rights. Therefore, it is the Order of this Court that Plaintiffs claim be and is

hereby dismissed with prejudice.

It is so ordered on this 13th day of December, 2000.

s/John Norman Harkey

Hon. John N. Harkey, Circuit Court Judge

APPENDIX C

IN THE CIRCUIT COURT OF THE COUNTY OF FULTON ARKANSAS

LLOYD VICKROY
PLAINTIFF

V. Civil No. CIV-2000-6-2

BRAD SCHAUFLER
DEFENDANTS

ORDER

On May 22, 2001 a hearing was held on the Plaintiffs Motion to Reconsider and Objection to Content of Order of Dismissal. Both parties were present at the hearing. The court finds that Plaintiffs motion should be dismissed. Therefore, it is the order of this court that Plaintiff Motion for Reconsideration and Objection to Content of Order of Dismissal is dismissed.

It is so ordered on this 24th day of May, 2001

s/ John Norman Harkey

Hon. John N. Harkey, Circuit Court Judge

APPENDIX D

Leslie M. Steen
Clerk

Robin Horne
Chief Deputy Clerk

Melissa Fuller
Chief Deputy Clerk

Jeanne Matthefus
Records Supervisor

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Supreme Court of the State of Arkansas
Arkansas Court of Appeals
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April 18, 2002

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Lloyd Vickroy
1900 County Road 7320
Caulfield, MO 65626

RE: 02 00288. Lloyd Vickroy v. Brad Schaufler

Dear Mr. Vickroy:

The Arkansas Supreme Court made the following order today in the above style case:

"Petition for review is denied."

Sincerely,

s/ Leslie W. Steen

Leslie W. Steen, Clerk

LWS:jko

cc: James Stephen Holt
Gene Maguffee, Clerk
(CIV-2000-6-2)